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Panel of Towns: Amherst, NY

Art Giacalone

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Presentation by Art Giacalone*, Attorney at Law, Amherst, NY

Peggy has certainly given a good overview of what's happening right now in Amherst and perhaps it might be helpful if I just briefly go through the chronology of the deer management steps that have been taken in Amherst over the years from my perspective which is as a lawyer — a lawyer, who because I've done a lot of zoning and land use and development issues became very aware that SEQRA, the State Environmental Quality Review Act, provided a tool to look and assess the environmental impact of such an activity as bait-and-shoot and also a chance for the public to have some kind of input and impact on the whole process. And from the bit of research that I did when I first got involved in this matter which was in 1996, it appeared to me that the end of 1994 was the first time the Town of Amherst took any steps to do any kind of deer management and at that point Town police officers were involved in a nuisance permit process where they were going on private land and hunting deer. They received their permits from the state DEC, but it was without a bait-and-shoot, it was just going on private land and hunting deer with permits and a couple of months later, I think it was in February of 1995, it was the first time the Town of Amherst approved a bait-and-shoot program and it was supposed to be short term and it was supposed to just be in the northeastern section of the town. It was that time around and it appeared to me that through that process they had not taken a look at the environmental impact of what they were doing, that they had not complied with SEQRA and that was in February of 1995.

A year later the Town of Amherst approved a three-year program of bait-and-shoot for 1996, 1997 and 1998. It was at that point that I was asked by a group of citizens if there was anything that

* Mr. Giacalone is engaged in the solo practice of law in Western New York, with an emphasis on zoning, planning and environmental law. Mr. Giacalone has a B.A. with Highest Distinction from the University of Rochester and a J.D. from Harvard Law School.

was possible legally to challenge that bait-and-shoot program. And that's when we brought a lawsuit challenging that three-year bait-and-shoot program. What became clear to me very quickly was that although the Town went through the motion of doing a review under SEQRA, one thing they didn't do was ever consider what their goals were. They never had a target of what they wanted the deer population to be in the Town of Amherst. They never spoke in their environmental review papers of how many deer they were hoping to euphemistically harvest during that three-year program. It appeared to me and it seemed to me and the court agreed with me that you can't in any way gauge the impact environmentally of a program such as bait-and-shoot if you don't articulate what the target population is, how many deer you plan on killing in that program. And so because of the court being convinced that SEQRA required that kind of thought process, the court declared that the resolution in March of 1996 was irrational and annulled it and said that if you're going to do any bait-and-shoot you have to go through the environmental review process from scratch.

If I recall correctly it was in February of 1997 that decision came down, and about five weeks later the Amherst Town Board, and from my perspective refusing to learn from past mistakes, rushed and did another very superficial environmental review and again approved what they called at that point a one-year bait-and-shoot program. It appeared to me that they were calling it a one-year program so that it only appeared that they were trying to eliminate approximately 22 or 23 percent of the deer. When you read the papers closely though the goal was to eliminate 69 percent of the deer over three years, and we once again challenged their decision to do bait-and-shoot. This time they had a number, but our argument was that if you are going to eliminate 69 percent of the deer population in the Town of Amherst that was going to have a significant impact on that deer population and the court, this time a different judge, also agreed with us and threw out that 1997 bait-and-shoot program.

I'm fairly frustrated at this point as I watch the process, it's very frustrating that given two successive years of State Supreme

Court Justices telling the Town of Amherst that they had to comply with SEQRA before they do something related to deer management that they took the steps with the state DEC to begin the immunocontraception program without having done a SEQRA environmental review. And it seems to me that eventually someone needs to learn from those mistakes. What saddens me as I watch that process is that of all the time and effort and energy that's wasted by not doing it correct the first time around or the second time around or the third around. And so when the lawsuit was brought, I guess it was about two months ago, whatever it was, challenging the immunocontraception program the state DEC immediately said, yeah, we should have done SEQRA and they withdrew their permit. Well, if it was that easy for them to realize they should have done it, it should have been done before that so that a program, a worthy program, could actually go forward rather than once again being stopped because of the failure to comply with a state law that has been on the books for more than twenty years right now -- the SEQRA environmental review process.

So as a lawyer watching what's happening it's very frustrating to not see an effort to closely follow both the letter and the spirit of the law in the environmental review process. I guess the only explanation I have for myself as I watch that is the controversial nature of the issue with the extent to which such dissension within the community about how to approach the deer problem leads, I think, decision makers to not take logical, rational steps but the action of making decisions more on their own gut feeling rather than on an overall philosophical policy. I still don't see the Town of Amherst as having an overall policy. One thing that I've never heard the majority of the Town Board talk about is what are we as a community doing policy-wise that's helping to create this problem? To what extent, for example, our development policies, our land use issues, to what extent is the development that we are allowing to happen in this Town causing and exacerbating these problems? No one ever addresses those issues and it's really important that they step back and look at those issues and try to honestly understand what's helping

to create the problem so that they then can go about in a logical way correcting the problem. And I don't see that happening. I instead see activity that is easily viewed as bad faith by one side or the other from various components, and then from town board members who before they even do the environmental review announce that of course we're going to have a bait-and-shoot program. And we'll just go through the motions and do the environmental review.

It's really hard if you're a resident of that community to hear that and then not feel that there isn't going to be an objective assessment and analysis. The fact that literally three weeks after a State Supreme Court annulled the three-year program in Amherst, the Town started baiting sites before they even completed their environmental review for the next time because there was a foregone conclusion that no matter what the environmental review was we're going to have bait and shoot. They put the bait out ahead of time so that the deer would be lured there and they could start killing the day that date passed the resolution. That kind of approach is not a way to find the cooperative assessment and approach to this significant a problem. And only when a town board is willing to honestly step back, honestly say what's creating this problem and let's try as a community to resolve this problem are we going to be able to get past the dissension and actually move on to something constructive to deal with issues that are really at hand. Thank you.